

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of	)	MB Docket No. 14-57
Comcast Corp. and Time Warner Cable Inc.	)	
	)	
For Consent To Transfer Control of	)	
Licenses and Authorizations	)	
	)	

**CALIFORNIA BLACK MEDIA’S PETITION TO DENY APPLICATIONS OF  
COMCAST CORPORATION, TIME WARNER CABLE INC., CHARTER  
COMMUNICATIONS, INC., AND SPINCO TO ASSIGN AND TRANSFER CONTROL  
OF FCC LICENSES AND OTHER AUTHORIZATIONS**

California Black Media, (“CBM”) submits these comments against the proposed merger between Comcast and Time Warner Cable for Consent to Transfer Control of Licenses and Authorizations (Applicants). The proposed merger between the Applicants should not move forward, and if it does it should not do so without substantive Public Interest Mandates. This is for several reasons. First, as it stands, the proposed merger gives rise to First Amendment concerns. Second, there are vertical integration and horizontally integrated media anti-trust violations. Third, the proposed takeover would create a media mega-corporation controlling access to a super majority of households<sup>1</sup> in the protected classes<sup>2</sup>, which is far too much power and control in the marketplace, would not be in the public interest, would not be consistent with

---

<sup>1</sup> Stanley Washington, President of the National Coalition of African-American Owned Media testified in front of U.S. House of Representatives, Committee on the Judiciary in a Hearing on “The Proposed Combination of Comcast and NBC-Universal” June 7, 2010 “For example, in Philadelphia --- the city in which Comcast is headquartered --- African Americans make up more than 43 percent of the city's population. A little more than half of all residents of Washington, D.C. are African American. In Detroit, 8 out of 10 residents are African American. Other Comcast markets with high concentrations of African American subscribers include: Atlanta, Baltimore, Birmingham, Chicago, Jackson, MS, Memphis, New Orleans, Oakland, CA, Pittsburgh, Raleigh-Durham and many more.”

<sup>2</sup> Under the United States Federal anti-discrimination laws, including the Civil Rights Act of 1964, race color, religion, and national origin all fall under a protected class.

diversity objectives set out by Congress and the FCC, and certainly, should not be approved. If the merger proceeds, it is appropriate for the FCC to apply a Public Interest Mandate to the merger to ensure that the core principles of diversity, competition, localism, and innovation remain in place. Consolidations of this magnitude have shown that the Applicants are in a position to take advantage of the position of power that they will have over the control of television programming, particularly that of diverse programming. The proposed merger will allow Applicants more room to exploit this power if Public Interest Mandates are not enacted within the merger for the protection of diverse programming.

CBM was founded in 2001, with the vision of harnessing the collective power of African-American media outlets to better inform their audiences and to set the agenda on policy conversations that affect the communities they serve. CBM reaches deep into the African-American media space not only providing exclusive entrée into the pages and airwaves of member organizations; it also delivers reliable access to a vast network of top level media decision-makers, experienced journalists, influential opinion makers and authoritative subject matter experts in every conceivable field of interest. This merger is of earnest interest to the members and audience of CBM as they keenly understand that approval of this merger will negatively impact diversity in the marketplace, further imperiling the voices of African American media due to the fact that their choices and outlets will continue to shrink under the consolidation afforded by this merger.

## **FIRST AMENDMENT**

While First Amendment suppression already exists in the current market, as there is the ability of a few major carriers to determine what is shown in a majority of American households, this ability will increase post merger. The First Amendment concern that exists with the merger

is that it would extend itself to creating more free press suppression than that which already exists in the current market as the top two largest cable companies are now combining. The First Amendment does not expressly provide for diversity of views in the press, nevertheless the Supreme Court has provided that the First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”<sup>3</sup> After all, the commission has for decades recognized the diversity of ownership in the nation’s broadcast industry is the important part of protecting the First Amendment rights of all Americans to receive a free flow of information and opinions from diverse voices. The voices of minority communities, particularly African-American communities are being silenced by the decline in minority ownership. The Commission must take concrete steps to prevent this loss of minority voices. Approval of this merger, if it does not specifically promote minority ownership and programming, will be ineffective at stopping the decline of minority voices in media and will, in fact, exasperate the same.

While there is diversity on cable it belongs to the few. The FCC and the courts have repeatedly noted that diversification does not solely exist in the viewpoints but also in who presents the viewpoints expressed. In *FCC v. National Citizens Committee for Broadcasting* the Court found that “diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as preventing undue concentration of economic power.”<sup>4</sup> The FCC originally increased jurisdiction over cable because as the cable system grew in size and popularity there was a worry that the free-for-all

---

<sup>3</sup>*Roth v. United States*, 354 U.S. 476, 484 (1957).

<sup>2</sup> See, *Prometheus II*, where the court concludes, “in addition, we note that the Supreme Court has upheld targeted FCC efforts to promote increased minority ownership. 373 F.3d 372. The Court has ruled that ‘the interest in enhancing broadcast diversity is, at the very least, an important governmental objective that justified FCC policies designed to promote minority ownership in broadcasting’. Citing *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547, 567 (1990).

<sup>4</sup> 436 U.S. 755, 780 (1978).

system would threaten local broadcast television.<sup>5</sup> This worry should extend to religious and ethnic diversity as well. A market driven by broadcasters and advertisers is a threat to the public interest and the First Amendment right of the public. The public has the right to hear what is in the public interest and from a variety of sources.

Indeed, the Supreme Court has acknowledged and accepted that minority ownership leads to program diversity, and the Third Circuit Court of Appeals has acknowledged that the Supreme Court's determination of the nexus between minority ownership and programming is still the law of the land.<sup>2</sup> Clearly then, the Supreme Court has determined that diversity of voices is an important First Amendment right. This leaves an affirmative duty for cable television providers, particularly ones like Comcast, who serve as as both a content and conduit provider, to support diverse ideas in the media. In *Red Lion* the Supreme Court affirmed that the FCC had the authority to grant licenses to broadcasters based on the judgment as to who would best present diversity, and this theory should extend to mergers with a content provider like Comcast.<sup>6</sup>

Diversity in broadcast media has long been an issue. As noted in a Senate hearing in 1989 on Media Ownership in Diversity, the cable system owners at that time took a minority percentage in every new programming channel that was started in the last two years.<sup>7</sup> This made it impossible to start new and diverse programming without the help of the cable system. In the sixteen years since the hearing, not much has changed. Comcast suggests that its proposed takeover of Time Warner must be evaluated on its own, independent of previous violations and transactions.<sup>8</sup> Comcast, in its merger with NBCU in 2010 made commitments along with its

---

<sup>5</sup> Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signal System Department and Order, FCC Real, 864-865 (1986).

<sup>6</sup> The Supreme Court found similarly for context regulation by the FCC, *Red Lion Broadcasting co. v. FCC*, 395 U.S. 367, 392

<sup>7</sup>Media Ownership: Diversity and Concentration : Hearings before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation, United States Senate, 105<sup>th</sup> Cong. (1989).

<sup>8</sup>Comcast Application, p19.

proposal to add four independently owned African-American stations in eight years. Two channels have since been added. One is Aspire – this is owned partially by Magic Johnson and partially by Intermedia.<sup>9</sup> The other network is REVOLT, owned partially by Sean “Diddy” Combs and co-owned by Andy Schuon who serves as president.<sup>10</sup> While Comcast has not announced what other two African-American stations are joining its carriage, the history since its merger with NBCU has made it abundantly clear that African American carriage with its company requires it to have substantial ownership and control as well<sup>11</sup>. This is troubling because it indicates that the decision over what type of media is shown to the public is based on the economic considerations of the cable system owner, and not on the diversity goals of the public. With the 1984 Cable Act<sup>12</sup>, Congress indicated that its goal was to promote diversity in the public market, and if Comcast, through becoming both the supplier of the system and the owner of the programming, is allowed to become the channel through which diversity is decided, free press is ultimately suppressed.<sup>13</sup>

## **VERTICAL AND HORIZONTAL INTEGRATION**

Comcast, through its merger with NBCU is already potentially anti-competitive vertically. The merger could allow it to move an anti-competitive situation horizontally into the

---

<sup>9</sup> See Intermedia website *available at* [www.intermedia.org](http://www.intermedia.org). See also, Anita Wilson-Pringle, Did Magic Johnson Sell-Out Black Business For Profit?, News One, Available at <http://newsone.com/2281663/magic-johnson-aspire/> where its reported that, “Magic Johnson inked the deal (Aspire) and promptly turned over all managerial control to GMC TV in Atlanta, GA-a 100% white owned company AND virtually a direct competitor to ASPIRE TV.” (Interestingly, Intermedia also owns GMC TV, see Intermedia. Also, Intermedia owns Universal Sports, complete with the NBC logo.

<sup>10</sup> Jeff Weiss, Diddy’s REVOLT TV tries to Reinvent Music’s Role on the Small Screen, March 20 2014, *available at* <http://www.lawweekly.com/2014-03-20/music/diddys-revolt-tv-tries-to-reinvent-musics-role-on-the-small-screen/>.

<sup>11</sup> James Bosworth, Written Statement by CEO of Back9Newtork Inc., to the United States Senate Committee on the Judiciary in the Hearing on “Examining the Comcast-Time Warner Cable Merger and the Impact on Consumers,” April 9, 2014. Bosworth noted that in Appendix A of his statement that Comcast’s “independent” networks have affiliation with Comcast. Comcast stated that Aspire, for instance, was developed with “in partnership with” it and that they provided a “platform” for it. Bosworth also noted that Bloomberg Business reported that REVOLT TV had a “backing from Comcast.”

<sup>12</sup> The Cable Communications Policy Act of 1984, 47 U.S.C., ch. 5, subch. V–A (1984).

<sup>13</sup> Before the Comcast – NBCU merger, Comcast was a cable supplier. It currently owns 100% of NBCU making it a content supplier as well.

markets of protected classes. This will allow Comcast to have complete discernment in what messages to allow onto its system by choosing which program to allow to compete with its programming, discretion in what messages will come into play, and the overwhelming power to decide what sources of information to allow into homes.

Comcast will add more than eleven million subscribers to its current twenty-one million including the New York City market.<sup>14</sup> The New York City market represents a giant market for diverse views with 66.8% of the city being a potential minority viewership.<sup>15</sup> The issue here is that the FCC has previously looked at the overall market to determine the relevant market, and the focus should actually be the harm caused to the smaller sub-market, the minority market, because it is a smaller more peculiar market with distinct customers that are actually harmed by this merger. As the leading supplier for content and a conduit, Comcast will be able to dictate the terms of dealing with others that create content and those that want access to its distribution platform.

The domination by Comcast in the minority market is troubling as Comcast currently provides limited options for minority content on television. Comcast and Time Warner currently have access to a large percentage of the nation's black cable TV households, and post-merger would be the dominate cable TV provider in the top ten largest African American TV markets.<sup>16</sup> Comcast currently offers four channels for these African American viewers and only plans to introduce two more to fulfill its obligation under the terms of merger with NBCU, Comcast plans

---

<sup>14</sup> Alex Sherman, Jeffrey McCracken, and Edmund Lee, Comcast Agrees to Buy Time Warner Cable for \$45.2 Billion, Bloomberg, *available at* <http://www.bloomberg.com/news/2014-02-12/comcast-said-to-agree-to-pay-159-a-share-for-time-warner-cable.html>

<sup>15</sup> "New York (city), New York". *State & County QuickFacts*. U.S. Census Bureau.

<sup>16</sup> National Association of Broadcasters, Broadcast Television and Radio in African American Communities, *available at* [http://www.nab.org/mpres/BroadcastTVandRadio-AACommunities\\_NAB.pdf](http://www.nab.org/mpres/BroadcastTVandRadio-AACommunities_NAB.pdf)

only to keep this same deal for the TWC merger– unchanged despite the great horizontal expansion.<sup>17</sup>

Previously, vertical integration in the context of programming was not an issue for the FCC because companies did not control the systems for both content and the conduit. However when Comcast, formerly a conduit supplier, became the owner of NBCU’s programming it assumed the previous worries were earlier dismissed, but those worries were never addressed by Congress or the FCC. The vertical integration completed by the NBCU/ Comcast merger gave Comcast the incentive to discriminate against programs that would compete with the channels that it is already offering, the control do so, and the ability to restrict competition by engaging in strategies against other networks. Comcast has already proven it will do so, and was fined by the FCC for acting in an uncompetitive manner by not allowing similar programs to the ones it owned in the same “neighborhood” as their own programming.<sup>18</sup> Now Comcast, by merging with TWC will be given more area coverage to potentially discriminate.

The proposed merger with TWC will exclude rivals to Comcast’s current programming, is harmful to the free competition of ideas that are necessary in this marketplace, and none of the innovative benefits touted by Comcast predominate over the potential harms that will occur should the merger move forward. Comcast has negated the idea of it ruining diverse programming by claiming that if it were to divest the few television stations that currently produce African-American programming it would lose a good chunk of subscribers in the

---

<sup>17</sup>Joint Written Statement by David L. Cohen, Executive Vice President Comcast Corporation and Arthur T. Minson, Jr. Executive Vice President and Chief Financial Officer, Time Warner Cable Inc. To the U.S. Senate Committee on the Judiciary Hearing on “The Impact of the Comcast-Time Warner Cable Merger on American Consumers” April 9, 2014. Page 47.

<sup>18</sup> Cecilia Kang, FCC: Comcast to Pay \$800,000 for Violating NBCU Venture Conditions, The Washington Post, available at [http://www.washingtonpost.com/blogs/post-tech/post/fcc-comcast-to-pay-800000-for-violating-nbcu-venture-conditions/2012/06/27/gJQA8MZU7V\\_blog.html](http://www.washingtonpost.com/blogs/post-tech/post/fcc-comcast-to-pay-800000-for-violating-nbcu-venture-conditions/2012/06/27/gJQA8MZU7V_blog.html)

market.<sup>19</sup> However, showing only the type of African-American programming on four different channels is not the definition of either diversity in viewpoints or diversity in ownership. Nor are these fears similarly allayed by the presence of new media such as Hulu and Netflix, who mostly purchase products that exist in the market and are furthermore only available to a select segment who own devices necessary to view the service.<sup>20</sup> This does not include basic cable users of whom African American and minorities make up a substantial portion.<sup>21</sup> This leaves a cable provider, such as Comcast, as the sole affordable option for in-home entertainment for many minorities. Basic cable and which currently has little diversity now, and certainly will not have any more diversity after the merger, absent intervention by the FCC through the enforcement of Public Interest Mandates in this merger.

## **PUBLIC INTEREST**

Violating free expression through media and committing anti-trust violations should be enough of a concern to stop the merger between Comcast and Time Warner Cable. When they are not however, this comment requests, notwithstanding the clear evidence against, should the FCC approve this merger, it requires a Public Interest Mandate. It is imperative that the FCC step in through its mechanisms to impose Public Interest Mandates and provide protection to the public from these potential free speech and anti-trust violations. The potential violation of the First Amendment and freedom of expression through media, as well as the potential anti-trust

---

<sup>19</sup>The Proposed Combination of Comcast and NBC Universal: Field Hearing Before the H. Comm. on the Judiciary, 111th Cong. (2010).

<sup>20</sup> Susan P. Crawford, The New Digital Divide, The New York Times, *available at* [http://www.nytimes.com/2011/12/04/opinion/sunday/internet-access-and-the-new-divide.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/12/04/opinion/sunday/internet-access-and-the-new-divide.html?pagewanted=all&_r=0). Article discusses how many poor, working-class, and minority users cannot afford access to or use restricted internet.

<sup>21</sup>The National Association of Broadcasters found that African-Americans rely disproportionately on over-the-air broadcasting and were not able to afford more elite services due to cost. Broadcast Television and Radio in African-American Communities, *available at* [http://www.nab.org/mpres/BroadcastTVandRadio-AACommunities\\_NAB.pdf](http://www.nab.org/mpres/BroadcastTVandRadio-AACommunities_NAB.pdf)



violations should be enough to warrant the imposition of Public Interest Mandates in the merger between Comcast and Time Warner Cable.

The FCC has previously included Public Interest Mandates with “must-carry obligations” and “program-access” rules to fulfill what Congress saw as necessity for diversity in programming. The government has done so previously with children’s programming.<sup>22</sup> There are mediums for children’s programming in the private realm<sup>23</sup> yet there are still mandatory public stations for children. The same should be required for diverse programming.

In 1992 when Congress adopted the Cable Act<sup>24</sup> it saw that independent cable networks were a good for diversity and competition and that the public benefitted from their presence. This cannot be a promoted value if substantive diversity is allowed to slip away. The continued disintegration of diverse viewpoints in the market is occurring because companies like Comcast are allowed to become the sole source of information and this is against the public interest. Allowing Comcast to be the sole source of information by being the gate keeper to decide what is shown in public homes is both anti-competitive and anti-consumer. Comcast is the last mile cable company for physical infrastructure, a content delivery service, and ISP manager, a broadcast network, a cable content company, a movie studio, a streaming content delivery service, a sports delivery service, and a local TV broadcast service. The merger with TWC will allow it to be fully horizontal in areas of the country that it previously did not reach, swallowing 19 out of 20 urban areas, and a large portion of African American homes. Without the mandate, it will swallow diversity as well. The merger with TWC will allow it to do all this for the public in geographical areas of the country that it was previously unable to. This is unacceptable because as Comcast continues to grow with the TWC merger, all diversity continues to shrink.

---

<sup>22</sup> Children’s Television Act, 47 U.S.C. 303(a), (1990).

<sup>23</sup> Disney and Nickelodeon stand as examples.

<sup>24</sup> The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (1992).

A commitment to promote diverse media ownership and programming is a fundamental component of our nation's communication policy. We suggest that the FCC meet that commitment by denying the merger, or in the alternative, consider several different types of meaningful and substantive Public Interest Mandates within the docket to achieve the outcomes discussed here.

## CONCLUSION

A Public Interest Mandate should require that the Comcast/TWC produce more independently owned African-American television stations apart from the four promised by the Comcast/NBCU merger and ensure that these stations are owned and operated by minorities, with minority majority boards, and with access to capital to fund their businesses. These stations should include more than just musical stations, these stations should include news channels, children's programming, movie channels, and other diverse programming that shows a full scope of the passions, demands, and wishes of the diversified community. Comcast should rethink their opportunity to create a separate cable company, by creating a minority owned "SPINOUT" to acquire their excess cable properties, to keep them under the "30%" threshold. There should also be more space for diverse religious programming as Comcast has dropped its commitment to the diversity in this space as well.<sup>25</sup> We suggest that the FCC meet that commitment and consider several different types of Public Interest Mandates within the docket to achieve the outcomes discussed here. For example we suggest that that the FCC consider a "must carry"

---

<sup>25</sup> Comcast has reduced the religious programming that it once showed. Comcast now has created a family tier that is for *purchase* that allows individuals to receive access to various religious programming instead of the programming that was previously for access in the basic cable package. Comcast Announces Family Tier, December 22, 2005. Available at <http://corporate.comcast.com/news-information/news-feed/comcast-announces-family-tier>. Comcast picked up the Trinity Broadcasting Network in 2005, one of the largest religious programming stations but then required "standard customers who wanted to keep receiving the programming to pay an addition \$14.99 a month. Five Channel Changes in Store for Comcast Customers. The News-Gazette, November 03, 2008. Available at <http://www.news-gazette.com/arts-entertainment/local/2008-11-03/five-channel-changes-store-comcast-customers.html>.

provision for sub-channels of “Minority-Owned and Operated, Independent Television Stations”, or a Mandate that suggests since NBC sub-channels are carried by the Applicants, the Applicants cannot exclude any other digital sub-channels, particularly ethnic and religious digital channels that are owned by independent minority owned stations and networks, particularly in markets where minority households comprise at least 40% or more of the target population served by the Applicant. We would also suggest a Public Interest Mandate that would make the deliberation process of carriage requests by the applicant of ethnic and religious programming, transparent and reviewable by the FCC in order to ensure that true diversity is prioritized and monitored.

The key here is that the proposed merger request by the Applicants, if approved, would create an enormous vertically and horizontally integrated media mega-corporation with far too much power and control in the marketplace, particularly amongst minority households, as a result. The FCC, given its mandate to protect the public interest, will surely impose conditions in the event of approval. The question then is how meaningful and effective these conditions are in protecting diversity and the public interest. As stated in a recent letter to the FCC by the Congressional Black Caucus of the U.S. Congress, “It should be clear now that prior experience with “mega-merger” proposals shows that even the most reasonable conditions and diversity pledges go unenforced when they are not incorporated into the merger applications as addendums.”<sup>26</sup>

---

<sup>26</sup> Letter Dated August 1, 2014 to Honorable Tom Wheeler, Chairman, Federal Communications Commission, From the Members of the Congressional Black Caucus.

Respectfully Submitted

*Regina Brown-Wilson*

Regina Brown-Wilson, California Black Media